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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,211	03/14/2001	Thomas D. Erickson	YOR9-2000-0671US1 (8728-4)	3294
46069	7590	08/24/2005	EXAMINER	
F. CHAU & ASSOCIATES, LLC 130 WOODBURY ROAD WOODBURY, NY 11797			PWU, JEFFREY C	
			ART UNIT	PAPER NUMBER
			2143	

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/808,211

Applicant(s)

ERICKSON ET AL.

Examiner

Jeffrey C. Pwu

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-20 and 22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,3-20 and 22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1, 3-11, 19-20, and 22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

For a claim to be statutory under 35 USC 101 the following two conditions must be met:

- 1) In the claim, the practical application of an algorithm or idea result in a useful, concrete, tangible result, AND

- 2) The claim provides a limitation in the technological art that enables a useful, concrete, tangible result.

As to the technology requirement, note MPEP Section IV 2(b). Also note In Re Waldbaum, 173USPQ 430 (CCPA 1972) which teaches "useful arts" is synonymous with "technological arts". In re Musgrave, 167USPQ 280 (CCPA1970), In re Johnston, 183USPQ 172 (CCPA 1974), and In re Toma, 197USPQ 852 (CCPA 1978), all teach a technological requirements.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e. abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fails to promote the "progress of science and the useful arts" (i.e. the physical sciences as opposed to social science or abstract sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply involve, use or advance the technological arts.

In the instant case, claim 1 for example, only recites an abstract idea. The recited steps of merely displaying information about perspectives of vaguely defined environment and an abstract display of another aspect of an undefined user activity within the environment does not apply, involve, or advance the technological arts. These steps only constitutes an idea of how to display information is various perspectives.

Mere recitation in the preamble (i.e. intended use or field of use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the claim as a whole to breathe life and meaning into the preamble.

Claim Rejections - 35 USC § 112

3. Claims 1, 3-20, and 22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.
4. With respect to claims 1, 12, and 19 the disclosure lacks clear written description in the description of specific user activities and its relationship to the environment.
5. With respect to claim 3, the disclosure lacks clear written description in the description of how to determine a value of at least one predefined characteristic and/or

dynamically incorporating the at least one predefined characteristic of the user activity in the activity map.

6. With respect to claim 4, the disclosure lacks clear written description in the description of each predefined characteristic of the user activity and its functional relationship with a user location, a user status within a hierarchy, a user emotion, or quality of conversion.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1, 3-11, 19-20, and 22 rejected under 35 U.S.C. 102(e) as being anticipated by Eick et al. (U.S. 6,154,212)

Eick et al. teach :

1. A computer-implemented method for representing user activity within an environment comprising the steps of:

- displaying an activity map (25) comprising at least two perspectives (26) of the environment, wherein each perspective is an abstract graphical display of at least one aspect of the user activity within the environment;

- selecting an element of a first perspective, wherein the element of the first perspective is an abstract graphical display of a first predetermined characteristic of the user activity within the environment; (col.8, lines 1-21; fig.3 & 4)

- displaying a tangible link associating the element of the first perspective and at least one element of a second perspective, wherein each element of the second perspective is an abstract graphical display of a corresponding predefined characteristic of the user activity within the environment; ("FIG. 3 framework will be described in detail below.

The network data structures stored in database 30 generally include information regarding nodes, links and other characteristics of the network to be displayed in the network nterface." Also see fig.5)

- determining a value of at least one predefined characteristic of the user activity; (col.9, lines 25-46)

- dynamically incorporating the value of the at least one predefined characteristics of the user activity in the activity map; (col.9, lines 25-46)

- where the activity map includes a geographic perspective and a discussion perspective, the two perspectives associated by the user activity within the environment; (figs. 4-5)

- wherein the discussion perspective includes at least one topic, wherein each topic is an element (col.4, line 40-col.5, line 15)

- wherein each perspective is one of a representation of the user activity, and a representation of user input to the environment; ("FIG. 5 shows a network interface constructed for a prototype network monitoring system. The network interface of FIG. 5

was generated using the FIG. 3 framework, and includes a set of four views A, B, C and D, each providing a different perspective on the above-noted MBone network data: view A shows a globe view of world-wide MBone traffic; views B and C are a landscape map and a flat two-dimensional map, respectively, showing MBone city activity; and view D is a node-oriented fan view showing the MBone city and IP address hierarchy.”)

Claims 12-18 and 1—20, and 22 are similarly rejected as in claims 1 and 3-11.

Response to Arguments

9. Applicant's arguments with respect to claims 1, 3-20, and 22 have been considered but are moot in view of the new ground(s) of rejection.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey C. Pwu whose telephone number is 571-272-6798.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


8/18/05

JEFFREY PWU
PRIMARY EXAMINER